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BY:

*Lynn Spina*

Date:

*March 31, 2006*

MAIL STOP AFTER FINAL

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Patent Application of:  
Frederick N. Biesecker *et al.*

Conf. No.: 6263 : Group Art Unit: 3727  
Appln. No.: 10/720,678 : Examiner: Lien M. Ngo  
Filing Date: November 24, 2003 : Attorney Docket No.: **4869-205US (1126-91)**  
Title: CLOSURE FOR A CONTAINER

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached four sheets (pages 2-5).

Respectfully submitted,

**FREDERICK N. BIESECKER *et al.***

*March 31, 2006*  
(Date)

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The Examiner has finally rejected claims 1-3, 5, 6, 11, 12, and 14 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,582,324 (Quinn *et al.*, hereinafter “Quinn”) in view of U.S. Patent No. 5,083,671 (Hayes *et al.*, hereinafter “Hayes”). Applicants respectfully submit that these rejections are clearly improper based on omissions of essential elements required to establish a *prima facie* obviousness rejection.

**The Examiner has failed to show any suggestion or motivation to modify or combine the references**

The Examiner asserts that it would have been obvious to one having ordinary skill in the art at the time the invention of the present application was made to make the closure of Quinn with a hinge as taught by Hayes “in order to facilitate of biasing of the hinge in a bi-stable living hinge”.

Quinn discloses a container cap assembly 12 comprising a cap body 14 including an annular wall 16 to which a lid member 18 is attached by hinge means 20. The hinge means includes a hinge pin 74 which rotatably attaches lid member 18 to cap body 14. Latching means 48 are provided, and comprise a tongue 50. Quinn discloses that free ends or edges 54 of the tongue 50 are curved or bent inwardly to provide a spring-action biasing means. Quinn states, “[i]t has been found that by making the tongue in the form of an arc or similar shape the free edges are placed in tension when the tongue is flexed outwardly away from the cap body 14.” See column 4, lines 53-57.

Hayes discloses a child-resistant package having easy opening and closing features. In particular, Hayes discloses a lid 77 rotatably attached to a skirt 73 by a living hinge 144. The living hinge 144 is disclosed to be a bi-stable living hinge such as that shown in U.S. Patent No. 4,700,858 (Bennett).

Applicants respectfully note that it is unclear what the statement “in order to facilitate of biasing of the hinge in a bi-stable living hinge” means. Applicants respectfully submit that the only sensible interpretation of this statement is that the Examiner is asserting that the artisan would be motivated to incorporate the bi-stable living hinge of Hayes to enhance the biasing

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function disclosed to be performed by the curved or inwardly bent free ends or edges 54 of the tongue 50 of Quinn.

The artisan having the disclosures of Quinn and Hayes would clearly recognize no motivation or suggestion to incorporate the bi-stable living hinge of Hayes with the closure of Quinn. The biasing function disclosed by Quinn to be accomplished by the curved or inwardly bent free edges 54 of tongue 50 is unrelated to the hinge design used to secure the lid member 18 to the cap body 14. Quite simple, substitution of the bi-stable living hinge of Hayes for the pinned hinge of Quinn would not effect the biasing function disclosed by Quinn.

Furthermore, the closure of Quinn is especially adapted for large bottles, and thus is of relatively large proportions. The artisan would recognize that the robust pinned hinge design of Quinn is especially well-suited for large closures, and would further recognize that a relatively weaker living hinge construction would be ill-suited for incorporation into the closure of Quinn, as it would be more prone to failure when applied to large closures than the pinned hinge design.

**Even if combined, the proposed combination of Hayes with Quinn would fail to disclose, teach, or suggest all of the limitations of independent claim 1**

Claim 1 recites, *inter alia*:

...

a generally annular skirt including opposed outer and inner surfaces, the skirt including a generally planar upper surface and a ledge extending from the inner surface and disposed proximate the upper surface, the upper surface having a generally circular opening extending therethrough;

a **generally circular and planar lid** at least generally coextensive with the opening, having a top surface and a bottom surface; . . . (Emphasis added.)

The lid 18 of Quinn is disclosed to be squared-off in the area of the hinge means 20. See for example Fig. 1 of Quinn. This shape is a necessary artifact of use of the hinge pin 74. Quinn does not disclose a generally circular lid. Likewise, the lid 77 of Hayes is disclosed to have a pronounced non-circular shape in the area of the living hinge 144, see, for example, Figs. 4 and 5 of Hayes. As claim 1 recites that the lid is **generally circular**, Applicants respectfully submit that the proposed combination of Quinn and Hayes fails to disclose each and every feature of

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independent claim 1.

**Even if combined, the proposed combination of Hayes with Quinn would fail to disclose, teach, or suggest all of the limitations of independent claim 11**

Independent claim 11 recites, *inter alia*:

...  
a container including an annular neck defining a container opening, the container opening defining a first area;

a closure including:

a generally annular skirt including an outer surface and an inner surface and the skirt further including a closure opening extending therethrough, the closure opening defining a second area, the first and second areas being similar in shape;

...  
wherein the second area of the closure opening **is at least equal** to the first area of the container opening.

Relative to claim 11, the Examiner asserts that “[i]t is obvious to have the neck in the Quinn et al. container position within the groove 34 of the gasket 38 (see figs. 4 and 5) and defining an opening that the closure opening 26 is at least equal to the opening of the container.”

Once again, Applicants must respectfully admit some puzzlement regarding the Examiner’s argument. If, as asserted by the Examiner, the top edge of neck 11 fits within the groove 34 when the closure of Quinn is assembled to the container 10, then the inner edge of the neck 11 would presumably coincide with the radially inward vertical edge of groove 34. That is, the diameter of the opening of the neck 11 would be defined by a line extending from one radially inward vertical edge of groove 34 to an opposing radially inward vertical edge on the opposite side of the cap assembly 12.

Applicants note that the circumference of the opening of the skirt 16 of Quinn is defined by the radially inward edge of depending lip 38. Since the edge of depending lip 38 is radially inward of the radially inward vertical edge of groove 34, it is clear that the area of the opening of skirt 16 of Quinn is **less than** the area of the opening of the container. As claim 11 recites that the closure area must be **at least equal to** the container opening area, Applicants respectfully

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submit that Quinn fails to disclose each and every feature of independent claim 11.

**Conclusion**

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case for obviousness in view of (1) failure to identify some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and (2) even if combined, failure of the proposed combination to teach or suggest all of the claim limitations. Withdrawal of the rejections of claim 1 (and claims 2, 3, 5, and 6 depending from claim 1) and claim 11 (and of claims 12, 14 depending from claim 11) and a Notice of Allowance are respectfully requested.